

2011

Texas Capital Fund Main Street Improvements Program Guidelines



Texas Department of Agriculture
1700 N. Congress
P.O. Box 12847
Austin, Texas 78711-2847

OVERVIEW OF THE TEXAS CAPITAL FUND Texas Main Street Program

The Texas Capital Fund (TCF) Main Street Program was created to improve the Texas economy. The program funds are a part of the United States Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program. The CDBG Program is known as the Texas Community Development Program (TCDP) and is administered by the Texas Department of Rural Affairs (TDRA). The Texas Community Development Program is the largest state CDBG Program in the nation.

The state has not yet received the 2011 allocation of funds from HUD. We are anticipating an allocation similar to the amount received for 2010, which was approximately \$73 Million for non-entitlement communities. Of this amount, TCF received approximately \$11.5 million, with \$600,000 allocated for the Main Street Improvements Program. Although, the 2011 allocation has not been made yet, the Main Street set aside will still be \$600,000 for 2011.

The goal of the Program is to aid in the elimination of slum and/or blight conditions for designated Main Street cities by the Texas Historical Commission (THC). These Main Street cities must also be designated as non-entitlement cities, generally having a population of less than 50,000. The TCF Program can provide funding for public infrastructure improvements and acquisition of land.

The TCF Program is administered by the Texas Department of Agriculture, through an interagency agreement with the Texas Department of Rural Affairs (TDRA).

This document serves as a reference guide for the Texas Capital Fund Main Street Application. HUD federal regulations governing the program are found at 24 CFR Part 570. Texas State rules governing the program are found in the Texas Administrative Code, Title 10, Part 6, Chapter 255, Subchapter A. Any additional information requests may be addressed to either of the following:

Texas Capital Fund
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711-2847
or
1700 N. congress
Stephen F. Austin Building
Tenth Floor/Room 1000
Austin, Texas 78701
512/936-0273
Fax (888) 216-9867
Website: www.TexasAgriculture.gov

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TDD/IT (800) 735-2988

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SECTION 1

Information to know before preparing to submit an application.

Appeals - An applicant for funding under the Texas Capital Fund Program may appeal the disposition of its application in accordance with the following guidelines:

1. The appeal may only be based on one or more of the following grounds:
 - A. Misplacement of an application. All or a portion of an application is lost, misfiled, or otherwise misplaced by staff, resulting in unequal consideration of the applicant's proposal.
 - B. Scoring error. In rating the application, the score on any selection criteria is incorrectly evaluated by staff.
 - C. Other procedural error. The application is not processed by staff in accordance with the application and selection procedures set forth in the rules.
2. The appeal must be submitted in writing to the Texas Department of Agriculture no later than 10 days following the date of the notification letter. The staff will evaluate the appeal and may either concur with the appeal or disagree with the appeal and prepare an appeal file for consideration by the Commissioner of the Texas Department of Agriculture. The Commissioner will then consider the appeal within thirty 30 days and make the final decision.
3. The applicant will be notified of the decision made by the Commissioner within 10 days after the final determination by the Commissioner.
4. Appeals not submitted in accordance with these guidelines will be dismissed and may not be re-filed.

Applicants - Eligible applicants must be an incorporated municipality with a designation as an official Texas Historical Commission Main Street City prior to applying to TCF. In addition, the applying city generally is less than 50,000 in population and cannot be designated as eligible or entitled to receive Community Development funding from Housing and Urban Development (HUD). These cities are referred to as non-entitlement communities. To determine eligibility of a particular city, contact either THC or the Department.

Applicant Performance Threshold Requirements - A city must meet all of the following requirements in order for its application to be considered:

1. Address the national objective of eliminating of slum or blight conditions in the designated Main Street area by one of the following objectives. The assistance must be for public infrastructure improvements, which will aid in the elimination of a slum or blighted area. This is further defined as follows:
 - A. Spot Slum/Blight Objective. To show how this objective will be met, the applicant must pass a resolution, which supports the establishment of the specific spot/area as slum or blighted. (Legal ref-10 T.A.C. Sec. 9.1 (a)(15))
 - a. Document that the project qualifies as slum or blighted on a spot basis under local law; and
 - b. Describe the specific condition of blight or physical decay that is to be treated.
 - B. Area Slums/Blight Objective. To show how this objective will be met, the applicant must pass a resolution, which supports the establishment of the area as slum or blighted. The documentation that is required to show that this objective will be met includes a designation of the boundaries of the area, a description of the conditions that qualify it as slum or blighted, and the way in which the assisted activity addresses one or more of the conditions that qualified the area as slum or blighted. (Legal ref-10 T.A.C. Chpt 255.1(a)(14&15))

An area within a municipality may be considered as a slum or blighted area, if the area is detrimental to the public health, safety, morals, and welfare of the municipality because the area:

- (1) Has a predominance of buildings or other improvements that are dilapidated, deteriorated, or obsolete due to age or other reasons; or
- (2) Is prone to high population densities and overcrowding due to inadequate provision for open space; or
- (3) Is composed of open land that, because of its location within municipal limits, is necessary for sound community growth through replatting, planning, and development for predominantly residential uses; or
- (4) Has conditions that exist due to any of the causes enumerated in Paragraphs (1)-(3) or any combination of those causes that:
 - a. Endanger life or property by fire or other causes; or
 - b. Are conducive to the ill health of the residents, disease transmission, abnormally high rates of infant mortality, abnormally high rates of juvenile delinquency and crime, or disorderly development because of inadequate or

improper platting for adequate residential development of lots, streets, and public utilities.

2. Demonstrate the ability to manage and administer the proposed project, including delivery of all the proposed benefits outlined in the application.
3. Demonstrate the financial management capacity to operate and maintain any improvements made in conjunction with the proposed project.
4. Levy, or demonstrate the ability to levy, a local property tax or local sales tax option.
5. Demonstrate satisfactory performance on prior and existing TCF contracts and resolve all outstanding compliance and audit findings related to previous TCF awards.
6. Applicants may not have an existing TCF contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted.
7. If an existing contract requires an extension beyond the initial term, TDA must be in receipt of the request for extension no less than 30 days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA must be in receipt of complete closeout documentation for the existing contract, no less than 30 days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the TCDP/CDBG Implementation Manual).
8. TCF program funds may not be used in any county that is **designated** by Texas Water Development Board as an Economically Distressed Area, unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to Section 12.343 of the Water Code or agrees to adopt and/or enforce the Model Subdivision Rules.

An incorporated city that is located in any EDAP designated county that has not adopted, or is not enforcing the Model Subdivision Rules, may submit an application for TCF funds. However, that incorporated city must adopt the Model Subdivision Rules prior to the expenditure of any TCF funds for the proposed project.

For more information, contact the Texas Water Development Board (TWDB) at 512/463-0991, or visit the Assistance Section of the TWDB website at www.twdb.state.tx.us

9. The applicant must be in good standing and compliance with THC's Main Street Program.

Application Date - The Texas Capital Fund Main Street Program is available annually, on a competitive basis, to eligible applicants statewide. The application deadline for the 2011 program year is **Tuesday, October 4th**. Applications will not be accepted after 5:00 p.m. on the day of submission. Applications shall be submitted to the offices of the Texas Department of Agriculture (TDA) at the address listed on page two of the Program Guidelines.

Application Process - After the application deadline, the scores are verified, analysis is performed, and a recommendation is made that the application be approved or declined by TDA. The application and award procedures consist of the following steps:

1. Each applicant must submit one complete application to the Department's Rural Economic Development Division. No changes to the application will be allowed after the application deadline date, unless they are a result of the Department recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.
2. After the application deadline the application scores are reviewed for validity and ranked in descending order.
3. TDA staff will then review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be notified of any deficiencies and given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature may be declined. Material deficiencies are items such as missing business and guarantor financial information, financing commitments, etc. In the event a determination is made that an application contains activities that are ineligible for funding, the application may be restructured or declined. If an application is declined, the application will be retained by TDA. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

4. TDA staff then reviews each complete application to make threshold determinations with respect to:
 - A. The project feasibility;
 - B. The strength of commitments from all other public and/or private investments identified in the application;
 - C. Whether the use of Texas Capital Funds is appropriate to carry out the project proposed in the application;
 - D. Whether efforts have been made to maximize other financial resources. Applicants must document that other funds are unavailable to fund the project.
 - E. The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF Program funds.
5. TDA staff prepares a project report with recommendations for approval or denial by TDA's Commissioner or the Commissioner's designee. TDA staff may initiate the need to negotiate some elements of the application that would be in the TCF contract if it is awarded.
6. The TDA Commissioner reviews the recommendation and makes the final decision. If approved, staff forwards the approval paperwork to TDRA for encumbering of funds.
7. TDA staff works with the award recipient to execute the TCF contract. The TCF contract must be based on the information provided that resulted in the award.
8. Contracts will be drafted and then reviewed by TDA management and the TDA legal department prior to being mailed to award recipients. Upon receipt, the award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the Commissioner or the Commissioner's designee, then a single copy is returned to award recipient.

Application Time Lines - The following is a summary of the normal time line for processing TCF applications to the point of award:

1. All application scores are reviewed. Scores may be lowered if errors are discovered or insufficient supporting information is contained in the application to justify any points. Scores are reviewed and finalized based on information contained in the application on the due date. Information and/or documentation received after the due date will not be considered for scoring purposes. Applications are then ranked from highest to lowest score. Any applications not scoring at least 25 points will be declined. The application will be retained by TDA. The level of available funds for that particular application round will determine how many of the applications will be considered for funding.
2. Applications are reviewed for completeness and eligible uses of funds. If any applications are found to have deficiencies or need additional clarification, a letter will be sent to the applicant identifying the deficiencies and/or questions. Ten working days will be given for a response. Failure to respond may result in the application being declined as incomplete. The application will be retained by TDA.
3. Upon satisfactory receipt of the deficiency responses, the completed application will be reviewed to determine financial feasibility.
4. Upon completion of the site visit, a final report is generated. If a determination is made that the application is feasible, a formal recommendation for approval is made to the Commissioner.
5. Upon action by the Commissioner, award or decline letters are mailed to the applicant's chief elected official.

Generally the total time frame for approvals is 60-90 days. Contracts are generally mailed out within 2-3 weeks after approval.

Note: Any extensions or delays due to deficiency responses and negotiations will extend the time line.

Assurances - The applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including Office of Management and Budget Circulars Nos. A-87 and A-102, as they relate to the application, acceptance and use of federal funds for this federally assisted project. Also, the applicant gives assurance and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with the provisions of: Executive Order 11988, relating to evaluation of flood hazards, and Executive Order 11990, relating to protection of wetlands.
3. It will have sufficient funds available to meet the non-federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.
4. It will obtain approval by the appropriate federal/State agency of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; that it will submit to the appropriate federal/State agency for prior approval changes that alter the costs of the project, use of space, or functional layout; that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.
5. It will provide and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the federal grantor agency may require.
6. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable federal, State and local agencies for the maintenance and operation of such facilities.
7. It will give the awarding agency, and the Comptroller General of the United States, the Texas State Auditor, or any of their authorized representatives, access to and the right to examine all records, books, papers, or documents related to the award.
8. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1-1961, as modified (41 CFR 101-17.703). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
9. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving agency that funds have been approved and that the project will be performed to completion with reasonable diligence.
10. It will not dispose of or encumber its title or other interests in the site and facilities during the period of federal interest or while the government holds bond, whichever is the longer.
11. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
12. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
13. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of federal and federally-assisted programs.
14. It will comply with all requirements imposed by the federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with Office of Management and Budget Circular No. A-102.
15. It will comply with the provisions of the Hatch Act, which limit the political activity of employees.
16. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act as they apply to hospital and educational institution employees of State and local governments.

17. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA.
18. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.
19. It will assist the federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the federal grantor agency to avoid or mitigate adverse effects upon such properties.
20. A. "It will comply with Texas Civil Statutes, Article 5996a, by insuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree."
B. "It will insure that all information collected, assembled or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Texas Civil Statutes, Article 6252-17a, unless otherwise expressly provided by law."
C. "It will comply with Texas Civil Statutes, Article 6252-17, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution."

Awards - This represents the minimum and maximum amount that may be requested/awarded for a project. These amounts apply to any project funded under the Texas Capital Fund Main Street Program.

Minimum \$50,000	Maximum \$150,000
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The program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not to exceed these amounts. All projects awarded under the TCF Program are subject to final negotiation between Department and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application. The Department allocates a maximum of \$600,000 for the Main Street Program.

Conflict Of Interest - Under the federal conflict of interest provisions at 24 CFR 570.489 (h), that are included in the regulations governing state administration of Community Development Block Grant (CDBG) funds (24 CFR 570, Subpart I), no persons who exercise or have exercised any function or responsibilities, with respect to TCF activities, or who are in a position to participate in a decision making process, or gain inside information regarding TCF activities, may obtain a financial interest or benefit from the activity, or have interest in any contract, subcontract, or agreement, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure, or for one year thereafter.

These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients that are receiving CDBG funds.

Under these provisions, a conflict of interest could exist (family member receiving benefit from an activity) if a member of a mayor's family was selected to receive TCF assistance. Another example where a conflict of interest could exist (business ties) is a situation where a consultant, who is employed by an engineering firm, has been selected by a city to provide grant administration services and the city is considering the selection of an engineer from that same firm to provide grant engineering services. TDA refers all conflict of interest issues to TDRA for determination of eligibility.

Contractor - An applicant city government unit that receives an award from Department.

Contracts - If an applicant is approved for funding they may need to enter various contracts to complete the project. These contracts are intended to ensure a complete understanding of the planned development, the expected improvements, the sources and uses of all funds committed to the project, the reporting requirements of the applicant to the Department, and all other obligations of the applicant and Department. Some of these contracts are identified below.

- Contract with the Department - This details the duties and responsibilities of both the applicant and the Department. Currently, these contracts are for a maximum term of two (2) years. Applicants should contact Department for a sample "boilerplate" contract, which will include many (but not all) contract conditions.
- Other contracts - These will include contracts for engineering and administration services, construction activities and others as necessary to carry out the project.

Dates - Various dates are used and referred to in these guidelines, and the contract an applicant enters into when their application is approved. Below are definitions of these dates.

- Application due date - This is the last day that applications may be submitted. See Section I Application Dates.
- Award date - This is the day the final contract between the contractor and TDA has been executed by all parties.
- Contract commencement/start date - This is the beginning date of the two (2) year contract period. It is also the same date as the *award date*.
- Contract end/expiration date - This is the date by which the project activities need to be completed.
- Closeout date - After all project activities have been satisfactorily completed, staff will issue a contract closeout letter. Closeout is effective on the date identified in the letter.

Department - Texas Department of Agriculture.

Liability - Title I of the Housing and Community Development Act of 1974 (42 USC 5.301 et seq.) requires all Community Development Block Grant (CDBG) funds to be expended in such a way to satisfy one of three national objectives specified in the statute. Texas Capital Funds provided under the Main Street Program are required to comply with the national objective of aiding in the elimination of area slum/blight or spot slum/blight. This requirement is fulfilled by funding projects for the express purpose of eliminating area slum/blight or spot slum/blight. The state has certified to the U.S. Department of Housing and Urban Development (HUD) that expenditure of economic development funds will satisfy this national objective and has also executed a grant agreement with HUD containing this requirement. Title I also provides that the state may only contract with units of general local government. The Department, therefore, has no choice but to hold the local government recipient of economic development funds accountable to the same extent that HUD holds the state accountable.

Main Street Designation - The applicant must be designated by the THC as a Main Street City prior to submitting a TCF application for main street improvements and must remain a participating city for the duration of the award/contract.

Main Street Recognition - The Texas Main Street Program requires that all official Main Street cities be in good standing with the current *National Ten Criteria for Recognition Survey*. This is also a scoring category with points being earned for National Recognition in the year prior to application submission. The ten criteria include:

1. Broad based public support for the commercial district revitalization process, with strong support from both public and private sectors.
2. Vision and mission statements relevant to community conditions and to the local Main Street Program's organization stage.
3. Comprehensive Main Street work plan.
3. Strong historic preservation ethic.
5. Active board of directors and committees.
6. Adequate operating budget.
7. Paid professional program manager.
8. Program of ongoing training for staff and volunteers.
9. Reporting of key statistics.

10. Current member of the National Main Street Network.

Number of Applications - The number of applications which a city may submit (and have funded, if feasible) is determined by factors affecting the city, as follows:

- The program income choice selected on a previous approved application;
- Contractual compliance on existing contracts;
- Applicants may not have an existing TCF contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted.
- If an existing contract requires an extension beyond the initial term, TDA must be in receipt of the request for extension no less than 30 days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA must be in receipt of complete closeout documentation for the existing contract, no less than 30 days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the Texas Community Development Implementation Manual).
- The applicant must satisfactorily close out an open TCF Main Street contract before the applicant can submit another TCF Main Street application.

See **Program Income (page 19)** requirements, in Section 3, and the **Applicant Performance Threshold Requirements page 4)**, in Section 1, for further guidance.

Project Length - Projects must be completed and all requirements of the TCF contract must have been met within two (2) years from the beginning date of the TCF contract.

Project Site - This includes the location of the proposed infrastructure improvements, within the Main Street area. This is further defined in the contract Performance Statement. **All proposed infrastructure improvements to be funded by the TCF Program must be located on public property and should be within the designated Main Street area.**

Section 106 Compliance - Each applicant is required to provide verification of compliance with Section 106 as described. The regulation requires the applicant to consult with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the federal grantor agency of the existence of any such properties. In addition, the applicant must comply with all requirements established by the federal grantor agency to avoid or mitigate adverse effects upon such properties. For application purposes, a copy of the letter submitted for determination of historic district eligibility to the History Division's National Register Program, at the Texas Historical Commission, shall be included. A fax copy of this letter will be acceptable. If grant award is received and eligibility or existence of a National Historic District is determined, the project construction plans must be submitted to the Architecture Division at the Texas Historical Commission in order to be in compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.). Please contact THC for more information.

Additional information about the National Historic Preservation Act and the Section 106 process may be obtained from the following web sites:

Advisory Council on Historic Preservation web site: <http://www.achp.gov/>

Advisory Council on Historic Preservation, National Historic Preservation Act/Section 106 guidance: <http://www.achp.gov/work106.html>

"Protecting Historic Properties, A Citizen's Guide to Section 106 Review": <http://www.achp.gov/pubs-citizensguide.html>

Section 106 reviewer contacts from Archeology and History Programs can be found at: <http://www.thc.state.tx.us/contactus/cot106reviewers.shtml> Architecture reviewers by region are listed at the bottom of this page, as well.

TxDOT Compliance – Each applicant will be required to indicate whether the proposed infrastructure improvements will be located within a Texas Department of Transportation (TxDOT) controlled highway, road, or right of way. If yes, the applicant will be required to provide documentation to the Department, which indicates that the applicant has notified and/or consulted with TxDOT of their proposed improvements prior to the TCF contract execution date.

Use of Funds - TCF monies are only available for public infrastructure improvements and related land acquisition. For all proposed uses, requested funds may not exceed the minimum necessary to meet the needs of the Main Street area.

Excess/speculative improvements, extra connections or excessive looping will not be funded.

For activities that will be funded with a combination of TCF and match monies, the match monies must be expended prior to drawing TCF monies. If a city experiences cost overruns or elects to do oversizing, the city's funds will be required to be used prior to drawing TCF monies. Also, if project costs come in under budget or the city elects to reduce the project scope, the committed match monies must still be expended prior to drawing TCF monies.

TCF monies are to reimburse a city for eligible expenditures they have made or incurred, rather than be advance payments. These reimbursements will be only for work/materials actually completed/delivered. Cities are responsible to pay construction contractors according to the terms of their agreements. TCF monies are available to reimburse cities for construction draws when they are in compliance with the terms of their TCF contract. Failure to comply with the terms of the TCF contract does not relieve the city of its liability to pay contractors. See *Match Requirement* in Section 2, page 16, for more information.

1. **Eligible Uses** - Funds may be provided for the following:

- Water lines, storage and pumping facilities, and related items;
- Sewer lines, lift stations, and related items;
- Road construction/renovation, to include curb and gutter and related drainage;
- Natural gas lines;
- Electric power lines and transformers;
- Purchase of land, easements, right-of-ways necessary for project;
- Lighting, sidewalks, public parking lots;
- Activities required to eliminate architectural barriers for the disabled; and
- Award administration.

2. **Ineligible Uses** - The applicant may not use funds for the following:

- Grant or otherwise transfer TCF monies to a business;
- Speculation, investment or excess improvements over the minimum improvements needed for the Main Street area;
- Building rehabilitation, building construction, machinery, equipment, and working capital;
- Landscaping-to include improvements strictly for landscaping purposes (ie. a water line for plant sprinklers);
- Refinancing or to repay the applicant, a local related economic development entity, a benefiting business or its owners and related parties for expenditures;
- Engineering/architectural services; and
- Demolition of a historic building, as determined by THC.

SECTION 2

Information to know while preparing an application.

The *Application* contains a checklist, which itemizes what documentation must be included in the application and the order in which it must be presented.

Acquisition - The cost of purchasing real estate, including easements, rights-of-way, land, site improvements, title policy, survey, appraisal, legal fees, miscellaneous closing costs, etc., after the TCF award/contract date.

Administration - A portion of an award may be used for administrative expenses incurred by applicants in order to meet contractual obligations. **TCF funds requested for Administration Services are inclusive of the TCF award.** See *Budget Justification* in section 1, page 13, for details and dollar limits.

Budget Justifications - This information should justify **all** proposed project costs, including that portion proposed to be paid by the TCF. Projects must include detailed information of **all** dollar amounts listed on the *Sources and Uses of Funds* form, page 12 of the application. **Note: Amounts must be rounded to nearest one hundred dollars (\$100) increment.** Funds must be delineated by source and use. This must include all major parts of the project, such as land acquisition, construction/rehabilitation, machinery/equipment, working capital, infrastructure improvements, and administration. Source information must include which entity is paying/providing funding for these activities. All budget justifications must be dated within six months of the submission of the application. Provide the following documentation to substantiate all project costs as outlined on the *Sources and Uses of Funds* form which will be incurred/expended upon receipt of a TCF contract award. No changes to activities and/or budget line items listed in the application will be allowed before a contract is signed.

1. If the project includes TCF or match funds for **land** and/or **building acquisition**, provide appropriate cost/value documentation, lien search, and complete legal description for subject property. Canceled checks and/or invoices and receipts must be provided.

NOTE: The acquisition of any real property associated with a TCF-funded project must follow the requirements of the Uniform Relocation Assistance And Real Property Acquisition Policies Act of 1970 (Uniform Act) and the HUD implementing regulations (regardless of whether the acquisition is funded by private funds). Contact Department for additional information on the *Uniform Act*.

2. If the project includes matching funds for **engineering or architectural services**, provide:
 - a. Description of services (separate basic and special) and related costs (ie. archeological studies);
 - b. Name of the individual or firm who prepared the justification and the date of preparation (must be prepared by a Texas-registered public engineer and/or architect).

NOTE: TCF monies may not be used to pay for engineering/architectural services. Engineering must meet the requirements of the Texas Engineering Practice Act. Cities will be required to identify the party responsible for ensuring that the projects are completed according to plans and specifications and for approving construction invoices. See the *Engineering/Architectural* in Section 2, page 15, for more information.

3. If the project includes funds for **public infrastructure**, provide:
 - a. Quantity and size of improvements (for example, total linear feet, diameter, capacity);
 - b. Types of material (surface type, pipe material, etc.) and costs;
 - c. Labor costs and a statement indicating whether Davis-Bacon wage rates will apply to the project. **NOTE:** Labor costs may activate the Davis-Bacon Act. Contact Department for additional information on the Davis-Bacon Act;
 - d. Statement indicating that the proposed improvements are the minimum necessary to support the Main Street area. The TCF Program will only consider funding the minimum improvements needed by the Main Street area (ie. Over-sizing a water line to accommodate future development is not eligible);
 - e. Name of the individual or firm who prepared the justification and the date of preparation (must be prepared and signed by a Texas-registered public engineer); and
 - f. Locations (subdivisions, street names, etc.). The locations description should match the locations shown on the Project Map.

Example - The proposed project includes the construction of approximately 5,000 linear feet of eight inch (8") PVC sewer line, 3,500 linear feet of service line, 10 manholes, five cleanouts, and fittings. Construction will take place in the following locations:

1st Street	Adams Avenue	Basin Street	1,000'
2nd Street	Adams Avenue	Basin Street	1,000'
3rd Street	Basin Street	Austin Avenue	1,000'
King Avenue	1st Street	4th Street	1,000'

NOTE: Sidewalk construction plans and specifications must be submitted to the Texas Department of Licensing and Regulation for review.

4. If the project includes matching funds for **building construction** and/or **rehabilitation**, provide:
 - a. Plans and specifications, including size of building, construction materials;
 - b. Itemized material costs;
 - c. Labor costs;
 - d. Architectural/engineering costs (pre-engineered metal buildings require an engineer's oversight); and
 - e. Name of the individual or firm who prepared the justification and the date of preparation (3rd party preparer generally required).

Note: All projects involving any building or sidewalk construction activities, regardless of source of funding, must ensure that building plans and specifications be submitted to the Texas Department of Licensing and Regulation for review, as required by the Texas Architectural Barriers Act. See the *ADA/Architectural Barriers Act* in Section 3, page 18, for more information.

5. If an application for funding is approved, the applicant is responsible for **administering** the award. This normally includes the following general areas: record keeping; environmental, including archeological studies; special conditions; RE acquisition; TCF quarterly reports; monthly THC reports; slum and blight documentation; close out; and audit, but does not include application preparation costs. Detailed information about award administration is contained in the implementation manual or may be obtained from Department. See the *Administration Draw-Down Requirements* in Section 3, page 18, for more information.

Applicants may request up to **\$15,000** of an approved award be allocated for **administration**. Award amounts are **inclusive** of administration funds. Please describe how these requirements will be met; how much is being requested to cover these costs.

Procurement of administrative services (funded by TCF) must be accomplished in accordance with certain State laws and OMB Circular No. A102. In projects where no funds have been requested for administration, the applicant is required to provide an administrative plan and budget showing how the required award administration will be completed.

Citizen Complaint Procedures - The applicant must have adopted written citizen complaint procedures that provide for a timely written response to complaints and grievances. The applicant complaint procedures must be similar to those that the Department must follow in the Complaint System 10 T.A.C. Part 6, Chapter 255, Subpart A. Citizens must be made aware of the location and hours at which times they may obtain a copy of the applicant written procedures, and addresses and phone numbers for submitting complaints. (Examples are in the Application packet.)

Citizen Participation - A contract with an applicant under the Texas Capital Fund Program (TCF) may be awarded only if the applicant certifies that it is following a detailed citizen participation plan that provides for and encourages citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas, and areas in which the funds provided under the contract are used in accordance with the following Citizen Participation Plan adopted by the TCF. Each applicant certifies, by signing the application that it has and will comply with the requirements of this Citizen Participation Plan. TCF applicants are required to carry out citizen participation in accordance with the following Citizen Participation Plan.

Each applicant must maintain a citizen participation file, which includes a copy of this Plan, the applicant's complaint procedures; any technical assistance provided by the applicant, public notices, and minutes, and attendance lists for public hearings/meetings.

The applicant must comply with the following citizen participation requirements for the preparation and submission of an application to the TCF Program:

1. At a minimum, the applicant must hold one public hearing/meeting prior to the development and submission of the application. It is suggested that this meeting be held a week or more prior to application submission.
2. The locality must retain documentation of the hearing/meeting notice(s), attendance lists, minutes of the hearing(s), and any other records concerning the proposed use of funds for a period of one year or until the project, if funded, is closed out. Such records must be made available to the public in accordance with Chapter 552, Government Code.

3. The public hearing/meeting must meet the following TCF notification requirements and include a discussion with citizens covering the following topics:
 - The development of housing and community development needs.
 - The amount of funding available.
 - All eligible activities under the TCF Program.
 - The applicant use of past TCF contract funds, if applicable.
 - The estimated amount of funds proposed for activities that will meet the national objective of benefit to low and moderate-income persons.
 - The plans of the locality to minimize displacement of persons and to assist persons actually displaced as a result of activities assisted with TCF funds, if applicable.
 - Citizens, with particular emphasis on persons of low to moderate income who are residents of slums or blighted areas, shall be encouraged to submit their views and proposals regarding community development and housing needs.
 - Local organizations that provide services or housing for low to moderate income persons, including but not limited to, the local Public Housing Authority, the local Health and Human Services office, and the local Mental Health and Mental Retardation office, must receive written notification concerning the date, time, location and topics to be covered at the public hearing.
 - Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing/meeting.
 - The public hearing/meeting notice must include the location and hours when the application will be available for public review.
 4. While more than one application for different TCDP fund categories may be discussed at the public hearing /meeting, that is, if the applicant is considering both a Community Development Fund and a Planning and Capacity Building Fund or a Texas Capital Fund application -- a hearing/meeting held for the previous program year's submittal of the same application (under either fund) is not acceptable for meeting the requirements for any subsequent competition.
 5. At least five (5) days prior to submission of an application, or applications for TCF assistance, the applicant must publish another public notice in a local newspaper that includes the following information:
 - The TCF fund categories for which application will be submitted.
 - The amount of TCF funds requested in each application.
 - A short description of the proposed project activities in each application.
 - The locations of the project activities included in each application.
 - The location and hours when the application will be available for public review.
- Note:** This 2nd notice must be published no less than one (1) day after the notice for the public hearing/meeting is published.

Public Hearing/Meeting Provisions: For each public hearing/meeting scheduled and conducted by a TCF applicant or recipient, the following public hearing/meeting provisions shall be observed:

1. Public notice of all hearings/meetings must be published at least seventy-two 72 hours prior to the scheduled hearing/meeting. The public notice must be published in a local newspaper and/or the predominant daily newspaper local residents subscribe to. Each public notice MUST include the DATE, TIME, LOCATION and TOPICS to be considered at the public hearing/meeting. A published newspaper article may also be used to meet this requirement so long as it meets all content and timing requirements. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.
2. Each public hearing/meeting shall be held at a time and location convenient to potential or actual beneficiaries and will include accommodation for persons with disabilities. Persons with disabilities must be able to attend the hearings/meetings and an applicant must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to each hearing/meeting. The public hearing/meeting held prior to submission of an application must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.
3. When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing/meeting, an interpreter will be present to accommodate the needs of the non-English speaking residents.

The applicant must comply with the following citizen participation requirements in the event that the applicant/recipient receives an award from the TCF Program:

1. The locality must hold a public hearing/meeting concerning any substantial change, as determined by the TCF, proposed to be made in the use of TCF funds from one eligible activity to another.
2. Upon completion of the community development program activities, the locality shall hold a public hearing /meeting and review its program performance including the actual use of TCF funds.
3. The locality must retain documentation of the hearing/meeting notice(s), attendance lists, minutes of the hearing/meeting(s), and any other records concerning the actual use of funds for a period of three years after the

project is closed out. Such records must be made available to the public in accordance with Chapter 552, Government Code.

Engineering/Architectural - These are costs related to the oversight/review activities for construction of infrastructure improvements, especially related to activities proposed to be paid by the TCF. Engineering/architectural services may not be paid by TCF funds. Contractor is liable for all costs. An engineer/architect is responsible for and must sign off on all draws for construction items.

False Information - In those instances where it is determined that an applicant or its agent provided false information for the purpose of improving its scoring or increasing its chance for approval. Additionally, a person commits an offense if he:

1. Knowingly makes a false entry in, or false alteration of, a government record;
2. Makes, presents, or uses any item, record or document with knowledge of its falsity and with intent that it be taken as a genuine governmental record; or
3. Intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record. A governmental record is defined as anything belonging to, received by, or kept by government for information or that government is required by law to be kept by others for information of government. An offense under Section 3 is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the third degree.

The following actions may be taken when TDA determines that an application contains false information:

1. If an award has been made, the locality may be liable for full and immediate repayment of TCF funds released if the false information resulted in the project being funded.
2. The locality will be ineligible to apply for TCF Program funding for a period of two program years or until any issue of restitution is resolved, whichever is longer.

Financial Commitment Letters - A letter of commitment from each funding source outlined on the *Sources and Uses of Funds* form must be included in the application and should follow the format of the see sample letters in Application.

NOTE: Matching funds from other state or federal sources are ineligible for consideration in this application.

1. A commitment letter (from all other private financing entities) must be included in the application indicating the commitment amount, the proposed use of the funds, the estimated date of availability, the rate and term, the expiration date of the commitment and the security of the loan. **NOTE:** Applicant must ensure that appropriate documentation has been provided in the application verifying the signature capacity/authorization on such commitment letters.

If other eligible sources of funding are injected into the project, the commitment letter must also be accompanied by a *Verification of Deposit* form (See form in Application packet).

2. The applicant must provide a resolution from the city council authorizing the match expenditure. The resolution must be include the commitment amount and the proposed use of the funds.

NOTE: The threshold for an application requires the city to provide a minimum cash match of 10% of the TCF request amount. Points, for additional match funds, may be earned as described in Match Requirement.

Labor Requirements for Construction Activities - Any kind of construction related activities that are being funded in whole or in part with TCF funds must comply with the Davis-Bacon Act (labor standards). This requires that the federal prevailing wage rate be paid to construction workers. This requirement applies to all primary and secondary contractors. The primary exception would be for the use of force account labor by the unit of local government (city or county). There is no such exemption under federal guidelines for private force account labor. The applicability and extent of Davis-Bacon Act requirements in regard to a particular project will be determined on a case-by-case basis by Department.

Maps - A minimum of three (3) project maps must be included with the application. The location of buildings, private and public infrastructure, that are part of this project must be identified. **All maps must be color coded, drawn to scale and with legend.**

1. The vicinity map must show the general location of the project in relation to major landmarks such as freeways, rivers, and major streets.
2. The designated main street area map must identify the specified boundaries of the main street area designated by THC. **Note: Proposed project must be located within these designated boundaries.**

3. The project site map must be a magnification of the project site delineating:
- identifying buildings and landmarks adjacent to improvements;
 - location and size of both existing and proposed infrastructure (road, water, sidewalks, sewer, etc.) improvements;
 - name of adjacent streets and identification of the nearest intersection; and
 - identification of proposed improvements (legend or key is encouraged) to clearly identify the proposed project.

Match Requirement - At a minimum, TCF monies must be matched with 10% of the requested grant amount in the form of cash from the city. Additional match contribution will earn points in the scoring process. Additional match may come from other eligible sources. Program income held at the local level must be used prior to contract funds, but may not be counted as match contributions. A firm financial commitment and a *Verification of Deposit*, if applicable, for all matching funds from other eligible sources will be required upon submission of the application. Funds and costs, outlined on the *Sources and Uses of Funds* form, may **not** be spent or incurred **prior** to the contract execution date, except for engineering/architectural services.

NOTE: Matching funds from other state or federal sources are ineligible for consideration in this application.

For activities that will be funded with a combination of TCF and match monies, the match monies must be expended prior to drawing TCF monies. Also, if a community experiences cost overruns or elects to do oversizing, the community's funds will be required to be used prior to drawing TCF monies. See Section 1 Use of Funds.

All force account or in-kind services may be applied only towards match in excess of the minimum required 10% cash contribution.

Pictures - The city shall provide no more than twenty-five (25) digital pictures (on a disk or CD), of the proposed project area. The pictures should be numbered and a narrative must be included. The pictures should show the entire project area including the slum/blight conditions which are to be eliminated and the narrative should be explicit.

Scoring Criteria - - The following is an outline of the selection criteria used by the Department for the selection of projects under the Texas Capital Fund. There will be a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. Scoring criteria follows:

- (1) In the event of a tie score, the following tie breaker criteria will be used:
- (A) The tying applications are ranked from lowest to highest, based on the applicant's most recently available individual decennial Census poverty rate. Thus, preference is given to the applicant with the higher poverty rate.
 - (B) If a tie still exists after applying the first criteria, then applications are ranked from lowest to highest, based on the most recently available, quarterly, county unemployment rate provided by the Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.
- (2) Project Feasibility (maximum 50 points). Measures the applicant's potential for a successful project. Each applicant must submit detailed and complete support documentation for each category. Compliance with the ten criteria for Main Street Recognition is required. First year Main Street Cities must receive prior approval from THC to apply and must submit the Main Street Criteria for Recognition Survey with the TCF application. The ten criteria include the following:
- (A) Broad-based public support for the proposed project-- (10 points). Show letters of support from the following:
 - (i) Score 5 points for providing a letter from the County Historical Commission, the local design review board, the Economic Development Corporation or Chamber of Commerce supporting the project and describing how the project enhances the community's historic assets and historic preservation goals.
 - (ii) Score 5 points for letters from 50% or more of the businesses and/or property owners impacted by the proposed project within the designated Main Street district. This specifically includes businesses within one (1) block of the proposed improvements.
 - (B) Infrastructure Project Plan-- (10 points).
 - (i) Score 5 points for providing the city's plan for dealing with an infrastructure project, including a detailed description of how access will be provided to affected businesses during project construction.
 - (ii) Score 5 points for providing a general description of future infrastructure projects in the Main Street area, over the next five years, and the potential impact to the area.
 - (C) Sidewalk and ADA Compliance Goals-- (10 points).
 - (i) 5 points awarded if a minimum of 50% of the requested funds will be used for sidewalk and/or ADA compliance activities, and
 - (ii) 10 points awarded if a minimum of 70% of the requested funds will be used for sidewalk and/or ADA compliance activities.
 - (D) Historic Preservation Ethic Impact-- (10 points). Preservation is a major component of the THC's Main Street program.

- (i) Award 5 points to applicants that have a current historic preservation ordinance.
 - (ii) Award 5 points to applicants that have design guidelines for the Main Street program or project area.
 - (E) Economic Development Consideration--(5 points) Five points will be awarded if the city has the economic development sales tax (Type A/B {4A/4B} or both).
 - (F) Main Street Program Participation --(5 points). Points are awarded on the applicant's continuous participation in the Main Street program as follows: For every two years of continuous participation in the Main Street program, the applicant will be awarded 1 point. Points will only be awarded for every two consecutive years and will not be broken into half points for increments other than two-year increments. If a city leaves the Main Street program and then returns at a later date, "continuous participation" will be calculated from the date that they returned to the program. Applicants will receive the maximum amount of points if they have participated in the program for 10 continuous years.
- (3) Applicant (maximum 50 points). There are six (6) applicant scoring categories each worth 5 to 20 points.
- (A) Minority Hiring (10 points). Measures applicant's hiring practices by taking the percentage of minorities presently employed by the applicant and dividing by the percentage of minority residents within the local community. Score 10 points if the applicant's minority employment rate is equal to or greater than the applicant's community minority rate.
 - (B) Leverage/Match (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds as follows: 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and in-kind.
 - (C) Main Street Standing (maximum 5 points). If the Main Street program received National Recognition the prior year, 5 points will be awarded.
 - (D) Community Size (10 points). Award 5 points if the population of the city is 12,000 or less; score additional 5 points if the population is less than 4,000, using the most recent decennial census data. City population figures are net of the population held in adult or juvenile correctional institutions.
 - (E) Texas Capital Fund Grant Training Score 5 points if a city official/employee has attended a TCF, Main Street Improvements and/or Downtown Revitalization application training workshop within the previous two (2) years.
 - (F) Poverty Level (maximum 10 points). Award 5 points if the city's most recent decennial Census, individual poverty rate is equal to or greater than the state poverty rate or award 10 points if the city rate is 15% or more over the state rate.

Verification of Deposit - All financial commitments, as outlined on the *Sources and Uses of Funds* form, will be verified. A sample form is provided in the application. The cash will be re-verified at the time the application is recommended for approval.

SECTION 3

Information to know if an application is approved.

ADA/Architectural Barriers Act - State law requires that all projects involving any building and/or sidewalk construction activities, regardless of source of funding, must ensure that the plans and specifications will be in compliance with the requirements concerning the elimination of architectural barriers encountered by persons with disabilities, as specified in TEX.REV.CIV.STAT. ANN. Art.9102 and the rules promulgated thereunder and be submitted to the Texas Department of Licensing and Regulation (TDLR) for review, as required by the Texas Architectural Barriers Act. The plans and specifications shall be sent to the Texas Department of Licensing and Regulations, Architectural Barriers Division, P.O. Box 12157, Austin, Texas 78711.

Additionally, all projects (cities) must ensure that they are in compliance with all provisions of the Americans With Disabilities Act (ADA).

Administration Draw-down Requirements - Below are administrative services draw-down thresholds. These thresholds are commensurate with the progress of the project and associated with administrative duties.

1. No more than a 35% draw-down of the TCF Administration line-item funds prior to start of construction. This date will be indicated on the *Start of Construction Notice*. Eligible line items would include environmental clearance activities, record keeping, procurement activities, acquisition, some special conditions, and quarterly reports
2. No more than an 80% draw-down of the TCF Administration line-item funds prior to the receipt of all required close-out documentation.
3. No more than a 90% draw-down prior to programmatic closure, less any reserved funds and final programmatic closure as noted on the *Certificate of Completion*.
4. The final 10% draw-down (100% total, less any reserved funds) may be requested upon programmatic closure and will be available following receipt of the programmatic close-out letter issued by the Department.
5. Any reserved funds will be released upon completion and submission of an acceptable audit.

All support documentation invoices submitted for TCF administrative services should be submitted to include milestones, percent complete, total earned, previously billed, and currently due.

Compliance as a Main Street City – Applicants must remain in the Texas Main Street Program, adhering to all THC contractual requirements until contract close-out is completed. Failure to comply may result in award cancellation and repayment of any contract funds already drawn.

Contract Threshold Requirements: Communities, also referred to as Contractor, that have approved applications will need to meet the following requirements:

1. Six Month Rule - Any contractor that has not completed certain project activities within the first six (6) months of the contract period may have contract funds deobligated and its contract terminated. Failure to comply with the six-month rule will also cause contract funding to cease. Minimum documentation required for compliance shall consist of the following contract items: completion of Section 20, Environmental Clearance Requirements and certain items in Section 22, Special Conditions.
2. Twelve Month Rule - Any contractor that has not completed certain project activities within the first twelve (12) months of the contract period may have contract funds deobligated and its contract terminated. Failure to comply with the twelve-month rule will also cause contract funding to cease. At a minimum, this must include receipt of the *Notice of Start of Construction* and a copy of contractor's resolution awarding the construction contract(s), if TCF construction funds have not been drawn.
3. Contractor shall submit to Department the TCF contract requirements of Special Conditions in Sec 22.A., prior to release of contract funds.

4. Contractor shall satisfy the Sec 22.B. Special Conditions prior to release of contract funds, excluding funds budgeted for administration.
5. Contractor shall satisfy the Sec 22.C. Special Conditions as required, but no later than thirty (30) days prior to contract expiration.

Draws - The minimum draw amount that may be submitted to TDA is \$2,500.

Environmental Review - ALL approved TCF projects require environmental clearance before TCF funds, as outlined on the *Sources and Uses of Funds* form, may be spent or incurred (with the qualified exception of general administrative costs). Applicant is at risk for any funds expended or incurred prior to receiving an award or an environmental clearance. The environmental review must include a review of private as well as public sector improvements. Environmentals will not be cleared prior to Department receipt of the fully executed TCF contract. Contact Department for additional environmental review information. **NOTE:** HUD has recently focused on the environmental process when reviewing TCF awards.

Minority Participation - Department encourages minority participation and will assist cities to identify potential minority contractors and subcontractors through Texas Building and Procurement Commission Minority Certification Program. Applicants must provide information regarding their local minority population and their minority employees.

Monitoring Visits - Department and/or THC may conduct random site visits to determine compliance and progress of the project and proposed activities.

Program Income - Gross income received by a state, a unit of general local government, or a subrecipient of a unit of general local government that was generated from the use of CDBG/TCF funds. When program income is generated by an activity that is only partially funded with TCF funds, the income shall be prorated to reflect the percentage of TCF funds used. Program income includes, but is not limited to, the following:

- Payments of principal and interest on loans, lease payments, and late fees;
- Proceeds from the sale of loans/leases;
- Gross income from the use, sale, or rental of real or personal property acquired by the applicant or a subrecipient;
- Gross income from the use, sale, or rental of real property owned by the applicant or subrecipient that was constructed or improved;
- Gross income from the use of infrastructure improvements constructed or improved with CDBG funds;
- Funds collected through special assessments, impact fees or other additional fees from benefiting businesses, if the special assessments or fees are used to recover all or part of the CDBG portion of public improvements;
- Proceeds from the disposition of equipment; and
- Interest earned on funds held in a Revolving Loan Fund account.

Communities that elect to participate in the recapture of program income for use at the local level through a designated Revolving Loan Fund (RLF) will be limited to receiving one TCF contract award per program year. If a community elects not to participate in the recapture of program income, the community may apply for as many TCF awards as it has eligible projects. This determination must be made at the time of the original award and cannot be changed with subsequent awards.

A local government, electing to retain program income at the local level, must have a Revolving Loan Fund Plan (RLFP) approved in writing by TDRA no later than six (6) months from the contract start date, prior to committing and expending any program income. The RLFP shall be approved and must be used for economic development in accordance with Title I of the United States Housing and Community Development Act of 1974, as amended. Program income generated by the award prior to TDRA's approval of an RLFP must be returned to TDRA.

If an approved RLF is established, the local government must first disburse any funds in the RLF for payment of activities associated with the economic development project prior to accessing state funding draw downs. If the local government receives a subsequent economic development award, all program income in the local RLF not committed must be allocated to the new project. Funds retained in the local RLF must be committed within three years of the original TCF contract start date and must be used to fund the same type of activity, for the same business, from which such income is derived. TDRA and TDA will determine when an activity will be considered to be continued. If the local government has not committed any RLF funds during the three-year period, all program income currently retained in the local RLF and any future program income received must be returned to TDRA to use in the statewide RLF.

Communities electing to retain program income through an approved RLF are required to monitor and report to TDRA program income account balances reflecting amounts received and disbursed and the status of outstanding loans or leases. Such report should also include information regarding RLF loans, leases and commitments made.

If the local government elects not to participate in program income recapture, fails to meet all requirements of this section or requirements identified in Section 6 of its TCF/TCDP contract or an RLFP is not approved prior to the contract close-out, then all program income must be returned to TDRA. Program income returned to TDRA will be placed in a statewide RLF for the purpose of providing funds for eligible economic development activities.

All applicants must complete a program income status report as part of their application. Utilization of uncommitted program income (from previous TCF economic development awards) is required for this project. The city should contact Department for clarification (if the city has program income).

Reports - Once an application is approved the city is responsible for project administration, including quarterly reports, as identified in the CDBG Implementation Manual, to the Department and a quarterly status report to THC.

Note: It is imperative that the Main Street Director keeps informed of the status of the grant administration at all times. The Main Street Director will be responsible for submitting a completed and accurate quarterly status report to THC by the first day of each calendar quarter during the contract period. Failure to comply may affect the community's ability to draw down TCF dollars.

Uniform Relocation Assistance And Real Property Acquisition Policies Act of 1970 (Uniform Act) -These policies must be followed any time real estate acquisition is involved (acquiring real estate with TCF or **any** other funds) in a project assisted with TCF monies. This may include real estate already acquired (generally within the previous 12 months) in anticipation of a proposed project. Therefore, all projects which will involve/include any real property acquisition or displacement (residents or businesses) should contact Department prior to initiating acquisition negotiations and/or prior to submitting a TCF application.

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